

## **ACQUISITION ADVISORY PANEL**

Meeting Minutes

June 14, 2005

The Auditorium, Federal Deposit Insurance Corporation (FDIC)  
Washington, D.C.

The Acquisition Advisory Panel (AAP) convened its seventh meeting on June 14, 2005 in the auditorium at the Federal Deposit Insurance Corporation (FDIC), Washington D.C. Ms. Marcia Madsen, Chair of the Acquisition Advisory Panel, opened the meeting at approximately 09:10 a.m.

The Chair welcomed everyone and began by introducing a new Panel member, Mr. David A. Javdan, General Counsel from Small Business Administration (SBA). Ms. Madsen stated that Mr. Javdan will be replacing Ms. Melanie Sabelhaus on the Acquisition Advisory Panel. The Chair remarked that Mr. Javdan had experience in private practice prior to his position at SBA, and noted that he brings a wealth of knowledge to the Panel. Ms. Madsen also extended her appreciation to Ms. Sabelhaus for her outstanding contributions to the Panel to date and wished her well on her return to private industry.

The Chair reviewed the agenda and indicated there would be updates from the Working Groups, presentations from several federal government practitioners, followed by two oral public comments. Ms. Madsen stated that there will be no update today on the newly established Inherently Governmental Working Group, chaired by Mr. Thomas Luedtke. Ms. Madsen noted that each of the Panel meetings have had a theme, and stated that today's theme is "owners of interagency vehicles."

Ms. Laura Auletta, the AAP's Designated Federal Officer (DFO), called the roll. The following Panel members were present:

Mr. Louis M. Addeo  
Dr. Allan V. Burman  
Mr. Carl DeMaio  
Mr. Marshall J. Doke, Jr.  
Mr. David A. Drabkin  
Mr. Jonathan Lewis Etherton  
Mr. James A. (Ty) Hughes, Jr.  
Mr. David A. Javdan  
Ms. Deidre A. Lee (arrived late - 9:59 a.m.)  
Mr. Thomas Luedtke  
Ms. Marcia G. Madsen  
Mr. Roger D. Waldron

The following Panel members were not in attendance:

Mr. Frank J. Anderson  
Mr. Joshua I. Schwartz

The Chair asked each Working Group to provide an update on their progress to date, including the scope of the issues and their path forward. Ms. Madsen provided the following order for these updates:

Performance-Based Contracting	Dr. A. Burman/C. DeMaio	(no charts)
Federal Acquisition Workforce	Mr. D. Drabkin	(no charts)
Interagency Vehicles	Mr. J. Etherton	(Attachment 1)
Commercial Practices	Mr. D. Drabkin	(no charts)
Small Business	Mr. D. Javdan	(Attachment 2)

Below is a recap of the aforementioned Working Group updates:

**Performance-Based Contracting (PBC):**

Panel member Allan Burman stated that the three main focus areas for the PBC Working Group were to: 1) provide clarity in the definition; 2) analyze the process, and 3) identify the type of government-wide data needed for better transparency. The next steps included talking to practitioners (both public and private sectors), developing a straw man process and soliciting comments on the AAP website. Panel member Carl DeMaio added that the Working Group is currently reviewing the “7 Step Process” for possible expansion.

**Federal Acquisition Workforce (Cross-Cutting):**

Panel member David Drabkin provided an overview of the current issues affecting the acquisition community, including the impact of the resource reductions over the past several years and an increased volume of complex workload. Mr. Drabkin stated that the Working Group will focus on the types of training needs required for the professional development of the acquisition community, and identified some of the current training shortfalls as well as potential tools to assist us with analyzing the acquisition community.

**Interagency Vehicles:**

Panel member Jonathan Etherton stated that the Interagency Working Group has completed its review of the congressional reports and testimony, Government Accountability Office (GAO) and Inspectors General Reports, and applicable statutes and regulations. The Working Group has categorized the issues into four (4) basic questions:

What are they?  
Why do agencies use them?  
How do agencies use them?  
How should agencies use them?

Mr. Etherton identified several specific issues related to the aforementioned areas (See Attachment 1). The next steps include the following actions, by timetable:

- Connect identified issues with applicable laws, regulations and policies (June 30)
- Collect and review agency and private sector practices (Continuing)
- Draft background and framing sections of report to the Panel (July 31)
- Use Working Group meeting to refine issues and emerging recommendations (Continuing)
- Begin drafting recommendations for the Panel (August 05)

#### Commercial Practices:

Panel member Mr. David Drabkin indicated that the Working Group had a recent meeting with General Motors on commercial practices and identified some best practices. Mr. Drabkin also stated that questions regarding commercial best practices have been posted to the AAP website for both government and industry, and he encouraged the public's input. Mr. Drabkin stated that the Working Group is reviewing the definition of "commercial item" and, in particular, "commercial services" and analyzing best industry commercial practices. Additionally, the Working Group is going to identify obstacles to using commercial practices, and impediments to full and open competition. They will also be looking at contract administration for services, requirements definition and informing the decision model evaluation factors for award, and minimum need.

#### Small Business (Cross-Cutting):

Panel member Mr. David Javdan provided an overview of the Working Group methodology and the challenges in defining the issues. Mr. Javdan stated that SBA has published a Federal Register Notice requesting comments on how to best restructure size standards, and provided a timetable of the upcoming public hearings being held across the country. This issue, therefore, will not be addressed by the Panel's Small Business Working Group. The Small Business Working Group is focused on three primary areas: 1) accountability for planning acquisition strategies to afford greater small business participation, with specific attention to contract bundling and adequacy of the guidance for interagency vehicles, 2) small business access to fair competition for awards under multiple award contracts and cascading procurements, and 3) integrity of subcontracting awards to small business, specifically in the areas of compliance mechanisms for small business subcontracting plans and timely payment to small business subcontractors.

The Chair thanked the Working Groups for their updates and efforts to date. Ms. Madsen indicated that this was a good step, but that there was still significant effort yet to be completed.

The following is a summary of the guest speakers and their affiliations:

Ms. Lisa Akers	FEDSIM	(Attachment 3)
Mr. Floyd Groce/ Mr. Rex Bolton	DON/ESI/SmartBUY	(Attachment 4)
Mr. Timothy Tweed	U.S. Army Contracting Agency, Fort Hood Contracting Command	(Attachment 5)
Ms. Ashley Lewis	Department of Homeland Security	(Attachment 6)
Mr. David Sutfin	GovWorks, Dept of Interior	(Attachment 7)

The Chair introduced the first speaker, Ms. Lisa Akers, Director, Federal Systems Integration and Management Center (FEDSIM). Ms. Akers thanked the Panel for the invitation and welcomed any questions throughout her presentation. Ms. Akers provided a background on FEDSIM, including its mission, budget, number and mix of personnel, and specifics on fee and training initiatives. She described the value proposition that FEDSIM offers stakeholders and customers and the various reasons why agencies use outside assisted acquisition services. These include constraints with the current appropriation process and the need for specialized expertise in the areas of running oral proposals and developing performance-based acquisition statements of objectives (SOO). Ms. Akers explained that FEDSIM promotes competition and fair opportunity by keeping the solicitation on the street' for 4+ weeks for mid-to-large sized acquisitions, naming the incumbent, publicizing the cost range and conducting due diligence, etc. She suggested several areas for improvement with interagency vehicles including the need for consistency of appropriation laws across agencies, a better definition on the roles and responsibilities of parties using interagency agreements, and the need for a governance structure to escalate issues. Ms. Akers also emphasized the importance of good negotiation skills for business managers, the need for better checks and balances (management controls) and the ability to retain and recruit an engaged workforce with sufficient grades to attract people to these demanding roles. Ms. Akers recommended that the Panel consider clarifying the definition of Information Technology (IT) in the Federal Acquisition Regulation (FAR) and standardizing training courses for acquisition professions across all government agencies. At the conclusion of her presentation, Ms. Akers opened up the floor for questions from the Panel members.

Panel Chair Marcia Madsen and Panel members Jonathan Etherton, Carl DeMaio, Allan Burman, David Drabkin, Deidre Lee, Louis Addeo, Roger Waldron and Ty Hughes asked several questions regarding the process used by FEDSIM in the areas of competition, contract disputes, acquisition planning, pricing methodologies, performance-based service statement of objectives, management controls and metrics. In addition, there was much discussion related to resource and training challenges experienced by agencies, and the need for consistent training requirements across all of the agencies. Ms. Akers also provided additional information on the use of e-Buy.

The Chair thanked Ms. Akers for her excellent presentation and recommendations. At approximately 11:30 a.m., the Chair called a one-hour lunch recess.

The Chair introduced Mr. Floyd Groce and Mr. Rex Bolton from the Department of the Navy, Enterprise Software Initiative (ESI) and thanked them for their participation in the Panel meeting. Mr. Bolton thanked the Panel for the invitation and appreciated the opportunity to share some of their best practices. Mr. Bolton provided an overview of ESI's background to include its mission, results, organizational structure, awards and its relationship with SmartBUY. Mr. Groce provided information on ESI's authority and the approach used in the Commercial Off-The-Shelf (COTS) Systems Integration Services. Mr. Groce also discussed some of the software-to-services ratios and explained that the cost is more in government procurements because of regulatory requirements, too much customization, redundant purchases of the same product or service, poor requirements and the large scale of users. Mr. Bolton discussed the ESI contracting process and why it has been so successful. He noted that the typical pricing structures are dependent on the clarity of the need and its solution. Mr. Bolton provided an example of the task order structure and its alignment with the COTS Project Life-Cycle. It included an explanation of baseline scope and factors, and methodology for pricing. Mr. Groce provided an example of a performance-based approach which included baseline variables, acceptance criteria, performance metrics and a payment approach tied to the project, phase and deliverable. Mr. Bolton concluded his presentation by outlining some of the features and benefits of the system, including increased price certainty, flexibility and efficiency. Mr. Groce and Mr. Bolton entertained questions from the Panel members.

Panel Chair Marcia Madsen and Panel members Jonathan Etherton, Carl DeMaio, Allan Burman, David Drabkin, Ty Hughes, Marshall Doke, Deidre Lee and David Javdan asked questions regarding contract types, fees and discounts, pricing, competition, strategic sourcing, partnerships with GSA and other agencies with interagency vehicles, metrics and best practices. There was much discussion and dialogue regarding the pricing of these contract vehicles, competition process and marketing of ESI and SmartBUY in relation to other similar interagency vehicles with other organizations. Mr. Bolton and Mr. Groce also provided detailed information regarding the types of services their organization provides to their Department of Defense (DoD) customers.

The Chair thanked Mr. Bolton and Mr. Groce for their presentations and requested that they make themselves available should additional questions arise from the Working Groups.

The Chair introduced the next presenter, Mr. Timothy Tweed from the U.S. Army Contracting Agency, Fort Hood Contracting Command. Mr. Tweed provided an overview of the briefing that Mrs. Sarah Corley, Deputy Commander, presented at the May 23<sup>rd</sup> Panel meeting for the benefit of those members who were not in attendance. This included an overview of the Command's installation, demographics, and mission. Mr. Tweed discussed the use of GSA schedules, FAR Part 8, socio-economic responsibilities, and goals. In addition he identified considerations when using other DoD and non-DoD contracts, such as understanding the offloading policies and fee structure, and issues related to geographic contract administration, especially in relation to the degree of competence required for Contracting Officer Representatives (CORs) and Quality Assurance Specialists. Mr. Tweed stated that there was difficulty obtaining accurate adjustments for wage determinations in 'out years' for commercial items. He stated that it can be unfair, overstated and impacted by the Contract Line Item Number (CLIN) structure. Mr. Tweed provided an overview of the major projects such as AVJAMSS (Aviation Joint Administrative Management Support Services) and remarked it was a master, Indefinite Delivery Indefinite Quantity (IDIQ), task order contract. He added that the AVJAMSS contract provides all aviation maintenance and aviation training requirements. Mr. Tweed noted there are six performance-based task areas that are designed for economy and flexibility, and stated the Government buys only what they need and when they need it. Mr. Tweed remarked that the benefits of this type of vehicle allow more speed, flexibility, quality and stewardship. Mr. Tweed opened the floor to questions from the Panel members.

Panel Chair Marcia Madsen and Panel members David Drabkin, Carl DeMaio, Allan Burman, Marshall Doke, Jonathan Etherton, Roger Waldron and Deidre Lee asked several questions regarding the Command's award process, specifically related to pricing methodologies, use of cost or pricing data, competition, performance metrics and contract types. There was much discussion on the challenges associated with the current appropriation process, specifically, line item appropriations, color of money and use of continuing resolutions. Mr. Tweed recommended to the Panel that they allow incremental funding on fixed-price contracts. Other dialogue entailed acquisition workforce training on the proper use of non-DoD vehicles, importance of accountability and developing cost-to-spend ratios.

The Chair thanked Mr. Tweed for his presentation and insightful recommendations.

The Chair introduced Ms. Ashley Lewis, Director of Acquisition Policy and Oversight, Department of Homeland Security (DHS). Ms. Lewis thanked the panel for the invitation

and welcomed comments or questions throughout her presentation. Ms. Lewis provided a brief overview of the DHS including its history, mission and organizational structure. Ms. Lewis stated that the Agency is less than two years old; however, they have made great strides in solidifying the infrastructure. She provided information on the FY05 planned obligations and FY04 contract actions and obligations by organizational element. Ms.

Lewis provided additional detail on these procurements by organizational elements, including top 10 purchased products and services and contractors. She also gave buying profiles on each of the organizational elements to include top services, products, contracting methods and competition rates. Ms. Lewis also provided a preliminary Small Business Procurement Report for FY04 noting their commitment to small business. Ms. Lewis concluded her remarks by summarizing DHS's current priorities, and stated that additional information may be found on their website. She also emphasized that their "Open for Business" link is an excellent web-based tool which is a single point of information on procurements and grants.

Panel Chair Marcia Madsen and Panel members Deidre Lee, Ty Hughes, Marshall Doke, Roger Waldron and Allan Burman asked several questions regarding DHS's use of and policies on interagency vehicles, competition, fair opportunities for small business, cost-to-spend ratios, strategic sourcing, and acquisition workforce and training issues. There was much discussion surrounding the challenges faced by DHS to issue internal polices because they fall under different authorities (Title 10 and Title 41) and are not subject to the FAR. Ms. Lewis also had dialogue with the Panel on the significant issues related to recruiting and retaining seasoned acquisition professionals.

The Chair thanked Ms. Lewis for her excellent briefing and informed her that she may be asked to provide some additional information to the various Working Groups.

The Chair introduced the last speaker, Mr. David Sutfin, Chief, GovWorks Division, Department of the Interior. Mr. Sutfin thanked the Chair for the introduction and the opportunity to present to the Panel. Mr. Sutfin provided an overview of GovWorks and its mission. He discussed the various aspects of the organization, including an explanation of the intragovernmental revolving funds, its Acquisition Management Center, and compliance with procurement laws and regulations. With respect to interagency contracting, Mr. Sutfin provided the benefits of using a franchise fund to include meeting surge capabilities, supplementing a shrinking workforce, and obtaining experienced resources for acquisition planning. In terms of improving interagency contracting, Mr. Sutfin suggested better guidelines on the process to include "Sarbanes-Oxley" reporting, and how to balance customer service, quality, training and cost. He also emphasized the importance of a scorecard to measure performance on compliance, training, education,

ethics, cost of operations and service. Mr. Sutfin discussed the many services that GovWorks provides, including areas such as acquisition planning, proposal evaluation and contract administration. Mr. Sutfin explained their use of Federal Supply Schedule (FSS) and GWAC contracts, their buying of commercial and non-commercial items and services, and their use of performance-based contracts, etc. He explained that with interagency contracting, there are improvements needed in training and skill sets, application of performance-based contracting, and understanding industry practices. Mr. Sutfin emphasized the need for project management training for contracting officers. He suggested that what would help the contracting officers would be a greater awareness of GSA schedules, a better scope determination process, and clear procedures for using schedules and commercial practices. Mr. Sutfin provided a brief overview of GovWorks Client and Vendor Base and Performance Metrics, and remarked that it included a high level of competition and a high percentage for the use of GSA schedules. He also stated that the GovWorks operation has been closely scrutinized by auditors, such as the GAO and Inspector General (IG). Mr. Sutfin said they are in the process of implementing recommendations on the area of franchise funds. Mr. Sutfin explained that there are 58 revolving funds, so the concept is not unique. Overall, he noted, the auditors had stated that GovWorks is doing a good job and has a consistent and definable process. He concluded by updating the status of the open and planned IG reviews for the balance of the fiscal year. Mr. Sutfin opened up the floor to any questions from the Panel members.

Panel Chair Marcia Madsen and Panel members Marshall Doke, Allan Burman, Jonathan Etherton, Roger Waldron and Deidre Lee asked several questions regarding the benefits of franchise funds versus interagency vehicles. There was significant discussion related to the obligating, parking/banking and retaining of unobligated funds, as well as the application of the bonafide need rule. There was also dialogue about GovWorks internal awards processes related to competition, pricing, small business set-asides and management and oversight. Additional areas of discussion included contract terms and conditions, cost-to-spend ratio, use of the Contracts Disputes Act and proposed organizational mergers within the Department of Interior.

The Chair thanked Mr. Sutfin for his presentation and indicated that the final item on the agenda included two public commenters.

Ms. Madsen introduced Mr. Alan Washburn, Mr. Alan Peterson and Mr. Thomas Patrick from Peterson Consulting. The presentation (Attachment 8) of Mr. Washburn and Mr. Peterson identified the need for regulatory and statutory reform to provide more equitable payment of interest in disputes, claims and similar situations. They outlined that the current interest rules fail to provide reasonable interest cost recovery to contractors. Mr.



Washburn and Mr. Peterson made five recommendations for improvements in interest recoverability, including amending the Contract Disputes Act (CDA). These included having interest accrual start from the day the increased costs are incurred or damage arises, and that rates used to pay interest on Government liabilities should be revised to reflect more realistic commercial financing cost rates, and quarterly compounding should be permitted.

Panel members Jonathan Etherton, Louis Addeo and Marshall Doke asked questions regarding the recommendations to amend the CDA. Mr. Etherton asked if Mr. Washburn could provide a copy of the recommended legislative changes in a line-in and line-out format and a copy of the Marathon decision justifying the judge's ruling with respect to the Supreme Court appeal.

The Chair introduced Mr. John M. Palatiello, the Administrator of the Council on Federal Procurement of Architectural and Engineering Services (COFPAES). Mr. Palatiello's presentation (Attachment 9) provided an overview of the organization's history and its authorities. Mr. Palatiello offered a detailed explanation of the Qualifications Based Selection (QBS) process, including the use of competition to obtain the best value for the optimum design approaches. Mr. Palatiello made key points on A&E services, stating they are not IT services, not commercial items and not procured via the FSS. He emphasized that QBS has been in the ABA (American Bar Association) Model Code since the Code's inception and QBS is the law in more than 30 states and is in practice in most others. As such, Mr. Palatiello urged the AAP Panel to make a recommendation that 18 U.S.C. 1761 (a) should not apply to services (interstate commerce). Currently the statute applies to goods, wares or merchandise manufactured, produced, or mined, wholly or in part, by convicts or prisoners. Mr. Palatiello thanked the Panel for their time and attention.

Panel Chair Marcia Madsen and Panel member Marshall Doke asked a couple of questions regarding the recommendations. Mr. Doke asked Mr. Palatiello to provide a brief on why the Panel should consider amending the current language in 18 U.S.C. 1761 to reflect services not being covered.

Below is a list of additional materials or information requested by the Panel during the guest speakers' presentations:

- Ms. Ashley Lewis - DHS:
  - FAR: cite examples used by TSA
  - Cost-to-Spend Ratio information

- Examples of Management Directives used on interagency vehicles
  - Specifically referencing current policy memorandum in final signature cycle
- Extended invitation to DHS to participate in Commercial Practices Working Group, specifically to assist in reviewing definition of “commercial item” and “commercial service”
- Mr. David Sutfin, GovWorks, Dept of Interior
  - Examples of Service Level Agreements (SLAs)
  - Examples of large, complex procurements using the Franchise Funds Model
- Peterson Consulting
  - Copy of recommendation for legislative language changes, example line-in, line-out of the statute
  - Copy of the portion of the Marathon decision justifying the judge’s ruling with respect to the Supreme Court appeal, and specifics related to the dissenting opinion
- John M. Palatiello –COFPAES
  - A brief on why the Panel should consider amending the current language in 18 U.S.C. 1761 to reflect services not being covered.

The Chair concluded the meeting with an announcement that the next AAP meeting is scheduled for July 12, 2005 at this same location, the FDIC.

## ADJOURNMENT

The DFO adjourned the seventh Acquisition Advisory Panel meeting at approximately 5:35 p.m.

I hereby certify that, to the best of my knowledge, the foregoing minutes are accurate and complete.



Ms. Marcia G. Madsen  
Chair  
Acquisition Advisory Panel